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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,996	08/01/2001	Nareak Douk	P563 CIP 2	9126

28390 7590 12/28/2004  
MEDTRONIC VASCULAR, INC.  
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EXAMINER

NGUYEN, VI X

ART UNIT PAPER NUMBER

3731

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/922,996

Applicant(s)

DOUK ET AL.

Examiner

Victor X Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-13, 19-22, 24-27 and 31-36 is/are pending in the application.
- 4a) Of the above claim(s) 7, 14-18, 23, 28-30, 37 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-13, 19-22, 24-27 and 31-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/14/2004 has been entered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-13, 19-22, 24-27 and 31-36 are rejected under 35 U.S.C. 102 (b) as being anticipated by Daniel et al (6,001,118).

Daniel et al disclose in fig 19 and col. 11, lines 50-67, col. 12, lines 1-33, a device (280) for capturing embolic material, including: a guide-wire (284), a capture element (290) disposes about the guide-wire. Item 292 is considered a latch defined as a device to get hold of or obtain another item that is used to get a hold of the guide-wire; and where the latch of Daniel is capable of being releasably engageable with the capture element to retain the capture element in the deployed configuration.

Regarding claims 2-5, Daniel et al disclose the capture element (290) is fixed to the guide-wire. The device further comprises a stop element (288) disposed on the guide-wire. At-

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least one latch (292) is positioned between the distal ends of the capture element. The device further comprises an inversion stop (288 or 294) fixed to the guide-wire.

Regarding claims 6-9 and 34-36, Daniel et al disclose the device further comprises a hollow, deployment rod (282) disposed about the guide-wire. The deployment rod pushes the capture element along the guide-wire and over the at-least one latch (292) that transforms the capture element from the closed configuration to the deployed configuration. The deployment rod comprises a catheter (figs 19, 20 a-b).

Regarding claims 10-13 and 31, Daniel et al disclose the capture element comprises a filter (290). The capture element comprises a tubular braid of filaments (312). The filaments comprise shape-memory metal wire which is nitinol (see col. 12, lines 7-59).

Regarding claims 19-22, Daniel et al disclose the capture element comprises a support structure (312). The support structure comprises a tubular braid of filaments. The support structure comprises a tube that has been slotted to form struts and the tube comprises nitinol (see fig. 19, col. 11, lines 4-14 and col. 12, lines 6-15).

Regarding claims 24-27 and 32-33, Daniel et al disclose the capture element comprises a filter that captures the embolic material. The capture element is made of polyurethane material (see col. 11, lines 4-49). The device further has at least one latch (292) that is suitable for engagement with the capture element and is fixed to the guide-wire (284).

### ***Response to Arguments***

3. Applicant's arguments filed 10/14/2004 have been fully considered but they are not persuasive. Applicant is asked to please refer to the modified prior art rejection above where examiner addresses applicant's concerns regarding prior art rejection.

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*Conclusion*

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (571) 272-4699.

The examiner can normally be reached on M-F (8-4.30 P.M).

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen  
Examiner  
Art Unit 3731

Vn *VN*  
12/23/2004

*Julian W. Woo*

JULIAN W. WOO  
PRIMARY EXAMINER